



SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (the "Agreement") is made between _____, ("PTG") and _____ ("Customer") as of the Effective Date. The parties agree as follows:

1. Definitions.

(a) "**Affiliate**" means any entity, directly or indirectly, controlling, controlled by, or under common control with, PTG.

(b) "**Component System**" means any one of the computer software programs which is identified in the applicable Order Form as a Component System. "**Component Systems**" refers, collectively, to every Component System listed in the applicable Order Form between the parties.

(c) "**Confidential Information**" means non-public information of either party to this Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of PTG includes, without limitation, the Documentation, the Component Systems, all software provided with the Component Systems and all algorithms, methods, techniques, code (Source Code and Object Code) and processes revealed or utilized therein, whether provided by PTG or its partner, Infor. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by the Recipient without access to Confidential Information.

(d) "**Delivery Address**" means the Customer shipping address set forth in the applicable Order Form as the Delivery Address.

(e) "**Delivery Date**" means, for each Component System, the earliest of (a) the date that PTG, or its partner Infor, places the Component System with a shipping agent, F.O.B. Destination, for shipment to the Delivery Address or such other address Customer specifies, (b) the date PTG provides Customer electronic access to the Component System by, for example, providing Customer a URL, where the Component System is available for immediate electronic download along with access codes permitting download and access to the Component System, or (c) the date that Customer actually receives the Component System.

(f) "**Discloser**" means the party providing Confidential Information hereunder.

(g) "**Documentation**" means the then-current PTG-provided operating and technical documentation relating to

the features, functions and operation of a Component System.

(h) "**Documented Defect**" means a material deviation between the then-current, general release version of the Component System and its Documentation, for which Documented Defect Customer has given PTG or Infor enough information for PTG or Infor to replicate the deviation on a computer configuration which is both substantially similar to the Equipment and is under PTG's control.

(i) "**Effective Date**" means the date identified on the signature page of this Agreement as the Effective Date.

(j) "**Equipment**" mean the hardware and/or systems software configuration (e.g., the computer, computer platform, operating systems and/or data base management system) specified in the Order Form, or, in the absence of any such specification in the Order Form, the hardware and/or systems software configuration on which PTG, whether itself or through Infor, generally supports use of the Component System.

(k) "**Intellectual Property Rights**" means any and all rights in patents, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks (including, where applicable, all derivative works of the foregoing).

(l) "**Customer Employees**" means: (i) Customer's employees with a need to know; and (ii) third party consultants engaged by Customer who have a need to know, who have been pre-approved in writing by PTG, and who, prior to obtaining access to the Component Systems, have executed an PTG-approved non-disclosure agreement and paid any applicable fees.

(m) "**Marketing Associate**" means a third party entity specified on an Order Form which has an agreement with PTG authorizing such third party to market the Component Systems and related services, maintenance and support to Customer.

(n) "**Object Code**" means computer programs assembled, compiled, or converted to magnetic or electronic binary form, which are readable and useable by computer equipment.

(o) "**Order Form**" means each order form or similar ordering document (including all Software Supplements) between the parties incorporating the terms of DIR Contract No. DIR-TSO-2574 and this Agreement and/or the Support Agreement that sets forth the Component Systems, associated fees and User Restrictions, among other terms.

(p) "**Order Form Date**" means the date identified on the applicable Order Form as the Order Form Date.

(q) "**Recipient**" means the party receiving Confidential Information hereunder.

(r) "**Software Supplement**" means, with respect to a Component System, the addendum attached to the applicable Order Form that contains additional terms, conditions, limitations and/or other information pertaining to that Component System. If any terms of a Software Supplement conflicts with any other terms of DIR Contract No. DIR-TSO-2574 and this Agreement or the applicable Order Form, the terms of DIR Contract No. DIR-TSO-2574 will control.

(s) "**Source Code**" means computer programs written in higher-level programming languages and readable by humans.

(t) "**Support Agreement**" means the Software Support Agreement entered into between the parties as of the Effective Date.

(u) "**Third Party Licensor**" means a third party whose software products ("**Third Party Products**") have been made available to PTG for distribution and licensing under the terms of its agreement with PTG (a "**Third Party Agreement**").

(v) "**User Restriction**" means any Component System user restriction identified in an Order Form (for example, and without limitation, number of named or concurrent users).

2. Right to Grant License and Ownership. PTG has the right to grant Customer this license to use the Component Systems. PTG either owns all right, title and interest to, or has the right to license, the Component Systems.

3. License. Subject to the terms and conditions of DIR Contract No. DIR-TSO-2574 and this Agreement and the applicable Order Form (including, without limitation, with respect to termination), PTG grants Customer a perpetual (unless otherwise specified on the Order Form), non-exclusive, non-transferable license (without the right to sublease or sublicense) to use the Component Systems (including any updates, enhancements or modifications to such Component Systems that PTG, through itself or Infor, provides under the Support Agreement) on the Equipment for Customer's own, internal computing operations. The computer readable media containing the Component Systems may also contain software programs for which Customer is not granted a license for use. Customer may not make any use of any such software programs for which Customer is not expressly obtaining a license for use under this Agreement. Any rights not expressly granted in this Agreement are expressly reserved.

(a) **Documentation.** Except as otherwise provided in the applicable Software Supplement, Customer may make a reasonable number of copies of the Documentation for each Component System for its internal use in accordance with the terms of DIR Contract No. DIR-TSO-2574 and this Agreement.

(b) **Additional Restrictions on Use of the Component Systems.** Customer's use of the Component Systems is subject to any User Restrictions specified in the applicable Order Form. Except to the extent contrary to applicable law, Customer is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Component Systems. Customer is prohibited from using the Component Systems to provide service bureau data processing services or to otherwise provide data processing services to third parties. Customer will not allow the Component Systems to be used by, or disclose all or any part of the Component Systems to, any person except Customer Employees. Customer acknowledges and agrees that U.S. export control laws and other applicable export and import laws govern its use of the Component Systems and Customer will neither export or re-export, directly or indirectly, the Component Systems, nor any direct product thereof in violation of such laws, or use the Component Systems for any purpose prohibited by such laws. Customer acknowledges that a special security program or code ("Key") may be required to operate the Component System. Any such Key may prevent the Component System from operating (i) on any configuration other than the Equipment or (ii) for more than the maximum number of users specified in an Order Form.

(c) **Intellectual Property Rights Notices.** Customer is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in or that PTG otherwise provides with the Component Systems. Customer must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Customer makes of the Component Systems.

(d) **Notice.** To use any of the Component Systems, Customer may also need to obtain, install and maintain PTG-supported versions of certain software products, database software products and certain software/hardware peripherals. By this notice, PTG is advising Customer that Customer should request information about such necessary software products, database software products and software/hardware peripherals.

(e) **Source Code.** Unless otherwise explicitly provided in an Order Form, Customer has no license to access or use, or any other rights in or to, the Source Code for a particular Component System. If the Order Form grants Customer a license to use Source Code for a particular Component System, then Customer has the limited right to use such Source Code to modify such Component System for its own, internal computing operations. Subject to the foregoing, Customer will not disclose all or any part of the Source Code for a Component System to any person except Customer Employees who, before obtaining access to the Source Code, have been informed by Customer in writing of the non-disclosure obligations imposed on both Customer and such Customer Employees under this Agreement. PTG will own all right, title and interest to all derivative works of the Component System ("**Derivative Works**"), even if solely created by Customer pursuant to a license to use Source Code hereunder. Customer hereby assigns to PTG absolutely all of its rights, title and interest in and to any Derivative Works created by the Customer together with all Intellectual Property Rights therein. Subject to the terms and conditions of DIR Contract No. DIR-TSO-2574 and this

Agreement, PTG grants Customer (if licensed to use Source Code hereunder) a perpetual (unless otherwise specified in the Order Form), non-exclusive, non-transferable license (without the right to sublease or sublicense) to use and copy for use the Derivative Works created by Customer or created by PTG at Customer's request and payment, for Customer's own, internal computing operations. Upon PTG's request, Customer will provide PTG with a copy (including all documentation related thereto) of all Derivative Works created by Customer and will execute and deliver to PTG any documents reasonably necessary to vest in PTG all right, title and interest therein.

4. Delivery. Except as otherwise provided in the applicable Order Form, the Delivery Date shall not be later than thirty (30) days after the Order Form Date.

5. Payment and Taxes.

(a) Payment. Payment will be handled in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-2574.

(b) Taxes and Shipping Charges. Taxes will be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-2574. Shipping will be handled in accordance with Appendix A, Section 8D DIR Contract No. DIR-TSO-2574.

6. Limited Warranty, Disclaimer of Warranty and Remedies.

(a) Limited Software Warranty by PTG and Remedy For Breach. PTG warrants that each Component System licensed to Customer will operate without a Documented Defect for a period of ninety (90) days from the Delivery Date. PTG warrants that the media on which the Component System is delivered will be free of material defects in material and workmanship for a period of ninety (90) days from the Delivery Date. PTG's sole obligation with respect to a breach of either of the foregoing warranties shall be to repair or replace the Component System or media giving rise to the breach of warranty. If PTG is unable to repair or replace such Component System or media within a reasonable period of time, then, subject to the limitations set forth in Section 15 of this Agreement, Customer may pursue its remedies at law to recover direct damages resulting from the breach of the applicable warranty. The remedies in this Section 6(a) are exclusive and in lieu of all other remedies, and represent PTG's sole obligations, for a breach of the foregoing warranties. Customer must provide notice to PTG of any warranty claim within the warranty period.

(b) Disclaimer of Warranty. The limited warranties in this Section 6 are made to Customer exclusively and are in lieu of all other warranties. **PTG MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE COMPONENT SYSTEMS, IN WHOLE OR IN PART, OR ANY OTHER MATTER UNDER THIS AGREEMENT. PTG EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. PTG EXPRESSLY DOES NOT WARRANT THAT THE COMPONENT SYSTEMS, IN WHOLE OR IN PART, WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION, WILL BE COMPATIBLE WITH ANY HARDWARE OR SYSTEMS SOFTWARE**

CONFIGURATION OTHER THAN THE EQUIPMENT, OR WILL MEET CUSTOMER'S REQUIREMENTS.

(c) Abrogation of Limited Warranty. PTG will have no obligation under this Section 6 to the extent that any alleged breach of warranty is caused by: (i) any modification of the Component System; (ii) Customer's failure to promptly implement changes that PTG, or Infor, provides to correct or improve the Component System; or (iii) the use or combination of the Component System with any computer, computer platform, operating system and/or data base management system other than the Equipment. To the extent that an alleged breach of warranty concerns a Third Party Product that is subject to a more limited warranty under a Third Party Agreement than specified in Section 6(a) above, PTG's obligations hereunder will be further limited accordingly. The limited warranty in Section 6(a) shall not apply to (x) updates, enhancements or modifications provided under the Support Agreement or (y) previously licensed Component Systems for which Customer is changing User Restrictions (e.g., without limitation, adding users) under an Order Form.

(d) **FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 6 AND 15 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER CUSTOMER HAS ACCEPTED ANY COMPONENT SYSTEMS OR SERVICE UNDER THIS AGREEMENT.**

(e) **HIGH RISK ACTIVITIES. THE COMPONENT SYSTEMS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE COMPONENT SYSTEMS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, PTG DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. CUSTOMER AGREES THAT PTG SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE COMPONENT SYSTEMS IN SUCH APPLICATIONS.**

7. Confidential Information. To the extent allowable by the Texas Public Information Act and except as otherwise permitted under this Agreement, the Recipient will not disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. Except in connection with the Component Systems and any software programs provided with the Component Systems, the non-disclosure and non-use obligations of this

Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item. However, to the extent allowable by the Texas Public Information Act, Customer's obligations to maintain both the Component Systems and any software programs provided with the Component Systems, including all algorithms, methods, techniques, code and processes revealed therein, as confidential will survive in perpetuity.

8. Indemnity by PTG. PTG Indemnification and Infringement will be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-2574.

9. Term and Termination.

(a) Right of Termination. Terminations will be handled in accordance with Appendix A, Section 10f of DIR Contract No. DIR-TSO-2574.

(b) Effect of Termination. To the extent allowable under record retention laws and policies, upon termination of this Agreement by either party, Customer will discontinue further use of the Component Systems, and will promptly return to PTG or (at PTG's request) destroy all copies of the Component Systems, and will certify to PTG in writing, over the signature of a duly authorized representative of Customer, that it has done so. Termination of this Agreement will not relieve either party from making payments which may be owing to the other party under the terms of DIR Contract No. DIR-TSO-2574 and this Agreement.

(c) Survival of Obligations. All obligations relating to non-use and non-disclosure of Confidential Information, indemnity, limitation of liability, and such other terms which by their nature survive termination, will survive termination of DIR Contract No. DIR-TSO-2574 and this Agreement.

10. Notices. Notices will be handled in accordance with Appendix A, Section 20f of DIR Contract No. DIR-TSO-2574.

11. Force Majeure. Force Majeure will be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-2574.

12. Assignment. Assignments will be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-2574.

13. No Waiver. A party's failure to enforce its rights with respect to any single or continuing breach of DIR Contract No. DIR-TSO-2574 or this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

14. Choice of Law; Severability. This Agreement will be governed by and construed under the laws of the State of Texas, as applicable to agreements executed and wholly performed therein, but without regard to the choice of law provisions thereof. This Agreement is originally written in the English language and the English language version shall control over any translations. If any provision of DIR Contract No. DIR-TSO-2574 or this Agreement is illegal or unenforceable, it will be deemed stricken from DIR Contract No. DIR-TSO-2574 or the Agreement and the remaining

provisions of the Agreement will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

15. LIMITATIONS OF LIABILITY. Limitation of Liability will be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-2574.

16. Compliance With Laws. Customer will comply with all laws, rules and regulations applicable to the use of the Component Systems.

17. Audit Rights. PTG (including any third party auditor retained by PTG) may audit the records and systems of Customer to ensure compliance with the terms of this Agreement and each applicable Order Form(s). PTG will notify Customer in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during Customer's regular business hours at Customer's location and will not interfere unreasonably with Customer's business activities. PTG may audit Customer no more than once in any six (6) month period. If an audit reveals that Customer is using a Component System beyond the scope of the license granted herein (such as for example, for a number of users greater than those that Customer licensed pursuant to this Agreement), then, Customer pay PTG the underpaid license fees therefore and associated fees for Support (as defined in the Support Agreement), based on PTG's Appendix C, Pricing Index of DIR Contract No. DIR-TSO-2574.

18. Miscellaneous. PTG and Customer are independent contractors under this Agreement, and nothing herein will be construed to create a partnership, joint venture or agency relationship between them. This Agreement shall be construed as if drafted by both parties and shall not be strictly construed against either party. PTG is an Equal Employment Opportunity employer. As such, 41 CFR 60-1.4(a), 60-250.5, & 60-741.5 are herein incorporated by reference.

19. Entire Agreement. DIR Contract No. DIR-TSO-2574 and this Agreement contain the entire understanding of the parties with respect to its subject matter, and supersedes and terminates all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document that may be issued by Customer in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends DIR Contract No. DIR-TSO-2574 and this Agreement; provided, however, that a modification mutually agreed to pursuant to a click-thru or click-wrap agreement delivered by PTG will be effective. DIR Contract No. DIR-TSO-2574 and this Agreement and any signed agreement or instrument entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of digital imaging, electronic mail or a facsimile machine, shall be treated in all manner and respects as original agreements or instruments and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. This

Agreement and all Order Forms entered into pursuant hereto may be signed in counterparts. In the event of a conflict in

terms, DIR Contract No. DIR-TSO-2574 will have precedence.

THE PARTIES have executed this Agreement through the signatures of their respective authorized representatives.

Effective Date: _____

Signature: _____

Printed Name: _____

Title: _____

Address: _____

Address: _____

Signature Date: _____

CUSTOMER: _____

Signature: _____

Printed Name: _____

Title: _____

Address: _____

Address: _____

Signature Date: _____